

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHARLES WYNN,

Petitioner,

-v-

SUPERINTENDENT FIVE POINTS
CORRECTIONAL FACILITY,

Respondent.

**USDS SDNY
DOCUMENT
ELECTRONICALLY FILED**

DOC #:

FILED 5/6/09

No. 08 Civ. 8807 (RJS) (GWG)
ORDER

RICHARD J. SULLIVAN, District Judge:

On March 1, 2008, Petitioner commenced this action in the Northern District of New York. (No. 08 Civ. 301 (N.D.N.Y.)). By letter dated June 11, 2008, Petitioner sought to withdraw his Petition because he had “sent in [his] claim to the incorrect location.” Pursuant to that request, the Petition was transferred to the Southern District of New York, and Petitioner’s request to withdraw the Petition was denied as moot. On October 15, 2008, this action was reassigned to the undersigned.

On April 25, 2008, Petitioner commenced a separate action seeking habeas corpus relief based on substantially similar challenges to his current confinement. *Wynn v. Lempke*, No. 08 Civ. 3894 (RJS) (GWG). On April 13, 2009 the Honorable Gabriel G. Gorenstein, Magistrate Judge, issued a Report and Recommendation in that case recommending that the Court deny the Petition. (No. 08 Civ. 3894, Doc. No. 12.) By Order dated May 4, 2009, the Court adopted Judge Gorenstein’s recommendation and denied the Petition in its entirety. (No. 08 Civ. 3894, Doc. No. 14.)

Accordingly, for the reasons set forth in Judge Gorenstein’s April 13, 2009 Report and

Recommendation and the Court's May 4, 2009 Order, Petitioner's instant Petition for a writ of habeas corpus relief is DENIED. In addition, because Petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. *See* 28 U.S.C. § 2253; *Love v. McCray*, 43 F.3d 192, 195 (2d Cir. 2005). The Clerk of the Court is respectfully directed to close this case.

SO ORDERED.

Dated: May 6, 2009
New York, New York



RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE

A copy of this Order has been mailed to:

Charles Wynn
04-A-1964
Five Points Correctional Facility
Caller Box 119
Romulus, New York 14541